

REMARKS

Claims 1 and 4-21 are now pending. Claims 1, 8, and 18 are amended. Claims 22-28 are canceled. Reconsideration is respectfully requested.

35 U.S.C. § 103 Rejections

Claims 1, 4-5, 7-13, 15-18, and 20-21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Muttik et al. (U.S. Patent No. 6,907,396) and further in view of Brody (U.S. Publication No. 2001/0051928). Applicant respectfully traverses this rejection.

The Muttik-Brody combination does not teach or suggest each and every element of the claims. Muttik's scope does not include and thus does not disclose "a computer system comprising a host facility and a portable computer device coupled to the host facility" (emphasis added). Moreover, Muttik also does not disclose validating and scanning the software during a pre-synchronization scan as claimed. Muttik is directed to a single system performing its functionality. See, e.g., col. 3, lines 43-49. Muttik does not disclose a system wherein a host and a portable device are operating in concert to achieve the claimed functionality.

Furthermore, Muttik does not teach or suggest "marking the software that is loaded as valid or invalid by the use of a flag." The examiner cites col. 4, lines 39-52 and col. 5, lines 15-19, however, Muttik merely states in the first instance that the "[e]mulator code 203 (working with emulator extension 204) ultimately outputs a decision 212 indicating whether suspect code is malicious or not." Outputting a decision is not equivalent to using a flag. In fact, Muttik teaches away from the use of a flag stating that if code is likely malicious, "the system reports the malicious code to a system user or system administrator." Col. 5, lines 17-19. Muttik does not teach that anything else is done with the code once it is reported.

Moreover, Muttik does not teach "automatically denying the software the ability to operate on any environment within the open platform computer system and denying synchronization of the software with the portable computer device" as claimed. The examiner cites that "if a computer virus or other malicious software is detected within the suspect code, the system additionally disinfects the suspect code." Col. 2, lines 64-67. Disinfection of code is not equivalent to preventing its operation and denying synchronization. One of the drawbacks of disinfection is that the disinfection process may not entirely cure the malicious code. Only

prevention of the code's operation and denying synchronization to the portable device can ensure the malicious code will not harm the portable device.

Brody does not cure Muttik's deficiencies. Applicant disagrees with the examiner's contention that Brody is not being relied upon to meet the limitation of scanning the software before downloading it to the PDA. The examiner states that Brody "was not relied upon to meet the limitation of scanning the software before downloading it to the PDA," however, the examiner clearly states the opposite in the rejection writing "Brody teaches a PDA coupled to a host device for personalization purposes. Furthermore, Brody et al. teach that one of the steps during the personalization process may be to scan the software before allowing it to be downloaded to the PDA to prevent downloading an application with malicious code (par. 105)." However, the PDA in Brody is doing nothing, that is, it does not perform nor is it involved, in the personalization process.

The examiner further states

Brody et al. was introduced since Muttik et al. did not explicitly state that the method claimed comprises a portable computing device coupled to the host computer. Brody et al. was furnished in order to suggest that the PDAs may be used to load information/applications from a host computer/network (par. 33). Also, Brody et al. additionally provide, in the disclosure, that it was commonly known to scan software applications to protect the user from possibly malicious effects of the software that is untrusted (par 105). Finally, Applicants claims merely call for the inclusion of a portable computing device and a host within an open platform computing system. In other words, there is no specific limitation that defines which of the two elements (from the host and the portable computing device) performs which functions claimed within the open platform system in a manner that would overcome the prior art of record. Final Office Action, 3/9/10, p. 3.

Though Brody, or any other generic PDA-host reference, reveals that information and applications may be downloaded from a host to a PDA, it is unclear why such a combination is suggested or necessary. Muttik already states that a type of computer system its method may be performed on is a personal organizer. Assuming, *arguendo*, Muttik's personal organizer is equivalent to a portable computing device, Brody adds nothing to the combination if it was not cited for its disclosure related to the personalization process. Both Muttik and Brody perform their processes without regard to another computer. In this scenario, because Brody adds nothing

and Muttik does not disclose all the elements, the references, alone or in combination, do not teach or suggest the claims.

If Brody's personalization process is cited as a reason for combination, the PDA is irrelevant. Brody merely describes that PDAs exist and, in disclosure that teaches away from any combination, states "the relatively small cost of PDA software (in many cases only a few dollars for a PDA software application) serves to reduce the incentive to attack the usage control. As a result, unauthorized copying and distribution does not appear to be a serious problem for PDA software." Para. 33. In other words, Brody explicitly states that its method is of little concern to the PDA-host relationship. Brody does not disclose a host computer performing a validation process for the PDA at all. This reason alone renders also renders the combination improper.

Additionally, nowhere in Brody is it stated that the personalization process scans any software before allowing it to be downloaded to a PDA. Furthermore, nowhere in Brody is it disclosed that the hand-held device is performing different functions on the hand-held device. The Examiner's cite is provided below for convenience:

It should be noted that while a personalization according to the present invention can be authenticated by the use of a digital signature, the goals and processes of applying a personalization are completely distinct from those of authenticating the software itself (such as for Java-based software, as previously discussed, which results in a "signed software application" or "signed archive"). As already detailed, the goal of authenticating software (such as a Java software application or archive) is to protect the user from possibly-malicious effects of untrusted software, and the process of doing so basically involves only the applying of a digital signature to the software and the subsequent validation thereof at run-time, according to well-known methods of public-key cryptography. In contrast, as disclosed herein, the goal of applying a personalization to software, with or without authentication, is to protect the software itself (and the software publisher who developed the software) by affording some degree of protection against unauthorized copying and distribution. Moreover, the processes of applying a personalization, as detailed herein, involve novel methods that are different from the mere application of a digital signature, although digital signatures may be used as part of these processes to protect the applied personalization against tampering and forgeries. Brody, para 105.

Brody clearly describes an authentication process according to well-known public key cryptography. This well-known process does not scan any software, but investigates and compares a digital signature to that of a trusted source. Brody makes an assumption that if a

digital signature is from a trusted source, then the software must not be malicious. This is a false assumption as malicious software could have a valid digital signature applied to it to fool this type of system.

Brody then states that the application of its personalization method is more secure than only using digital signatures. However, this statement does not imply that a host computer is performing a scan or validation using emulation or carrying out any functions whatsoever. Brody clearly states that its method affords “some degree of protection against unauthorized copying and distribution.” In other words, Brody has nothing to do with emulation, virus scanning, or other techniques of discovering malicious code.

Furthermore, the Brody cite teaches away from the present invention as claimed. Brody states “the goal of applying a personalization to software, with or without authentication, is to **protect the software itself (and the software publisher who developed the software)** by affording some degree of protection against unauthorized copying and distribution.” This is not “ensuring the security of a computer system” as claimed. Personalization is to ensure that a publisher is able to control the distribution of its software (e.g., gets paid for each downloaded copy). As such, Brody does not provide for validating any software in a secure environment as claimed.

Brody and Muttik, alone or in combination, do not disclose, teach, or suggest each and every element of the claims as required. As argued above, one ordinarily skilled in the art would not look to combine these references because of their quite disparate teachings. Accordingly, Applicant respectfully requests withdrawal of this rejection.

Claims 6, 14, and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Muttik et al., in view of Brody as applied to claims 1, 8, & 17, further in view of Ginter et al. (U.S. Patent No. 6,948,070). Applicant respectfully traverses this rejection.

As argued with regard to claims 1, 8, and 18, Muttik and Brody, alone or in combination, do not teach or suggest the present claims. Ginter does not cure the Brody-Muttik combination’s deficiencies. Ginter is directed towards electronic commerce transactions. Accordingly, Applicant respectfully requests withdrawal of this rejection.

CONCLUSION

In light of the above remarks, Applicant respectfully requests reconsideration of the rejected claims and solicits their allowance. In the event an interview is useful in resolving any issues, the Examiner is invited to telephone the undersigned representative.

Respectfully submitted,

BERRY & ASSOCIATES P.C.

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